FLORIDA'S DEPENDENCY BENCHBOOK

BENCHCARD: TPR ADVISORY HEARING

Items in **bold font** are required by Florida Statutes.

Note: TPR Advisory Hearings are closed proceedings and, as appropriate, exclude persons who are not parties, participants, persons entitled to notice of the advisory hearing, or lawyers involved in the case. § 39.809(4).

Introductory remarks.

- Explain the nature and purpose of the hearing.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Section 8*)

Representation and appointment of counsel.

- **If parents do not have counsel, advise parents of right to legal counsel. The offer of counsel must be renewed at every hearing. §§ 39.013(9), 39.807(1)(a), 39.807(1)(c)3.**
- **Ascertain whether the right to counsel is understood. §§ 39.013(9), 39.807(1)(a).**
- If counsel is waived it must be on the record. Rule 8.320(b)(2**). Determine if waiver is made knowingly, intelligently, and voluntarily. §§ 39.013(9), 39.807(1)(a), 39.807(1)(c).**
- If parents request counsel and claim to be indigent, have parents fill out affidavit for indigency. **If indigent per affidavit and the parents request it, appoint counsel for parents. §§ 39.013(9), 39.807(1)(a).**
- If parents are ineligible for the appointment of counsel or knowingly, intelligently, and voluntarily waive appointed counsel, ask if the parents want to proceed pro se or hire a private attorney. Explain "pro se" if necessary.
- Advise the parents of their right to an effective attorney. Rule 8.510(a)(2)(A).
- Follow the circuit plan (developed by the chief judge) so that orders appointing counsel are entered on an expedited basis.

Parties and notices.

- Have all parties identify themselves for the record with full name and permanent address. Advise parties that the court will use the address for notice purposes until notified otherwise in writing. (Note: Do not openly identify the address when one or more of the parents is party to an injunction for protection against domestic violence.)
- **Confirm that the following persons were served with the petition for termination of parental rights; notice of the date, time, and place of the advisory hearing; and a summons with the required statutory language that specifically notified them that a petition has been filed:**
  - **Parents of the child;**

- **Legal custodians of the child (if the parents who would be entitled to notice are dead or unknown);**
- **A living relative of the child;**
- **Physical custodian of the child;**
- **Grandparent entitled by law to priority for adoption under § 63.0425;**
- **Any prospective parent who has been identified under § 39.503 or § 39.803;**
- **The GAL or GAL program representative.** (*See Service, Section 8*)

- **If the parent's location is not known, require a thorough description of DCF's efforts to locate and advise any absent parent of the hearing and confirm that a diligent search is in progress, if not yet completed. Verify that the diligent search complies with requirements of § 39.803(6).**
- Conduct a paternity inquiry if still in dispute. If a parent has not legally established paternity, DNA testing should be ordered after proper inquiry, applying Privette principles as appropriate. If necessary, examine birth certificate or inquire as to marriage status. (*See Paternity in Dependency Cases, Section 3*)
- **If inquiry and diligent search identifies a prospective parent, that person must be given an opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood. § 39.803(8).**
- **If the diligent search fails to identify and locate a prospective parent, the court shall so find and may proceed without further notice. § 39.803(9).**
- **Advise the parents of the availability of private placement of the child with an adoption entity as defined in Chapter 63, Florida Statutes. Rule 8.510(a)(2)(B). See also §§ 39.802(4)(d) & 63.082(6)(g); Rule 8.255(i).**
- **Appoint Guardian ad Litem Program to represent the best interests of the child if it has not yet been appointed. § 39.402(8)(c); Rule 8.215.** (*See Guardian ad Litem, Section 4*)
- If the child is eligible for membership in a federally recognized tribe, confirm that the case worker has notified the tribe pursuant to the Indian Child Welfare Act. (*See Indian Child Welfare Act, Section 7*)
- Ask the parents if they are involved in any other past or pending family law, paternity, domestic violence, delinquency, or child support cases other than those previously disclosed. (*See Dependency in the Context of Unified Family Court, Section 2*)
- Verify that relatives who requested notice actually received notice to attend the hearing.
- Ask parents, and others entitled to notice, who else should be involved in the court matter or who else is significant in the child's life.
- Verify timely compliance with all ICPC requirements. (*See Interstate Compact on the Placement of Children, Section 7*)

Review the child's placement.

- Have the case worker or DCF representative state the number of days the child has been out of home.
- Have the case worker or DCF representative state the child's placement.
- Have the case worker or DCF representative provide evidence concerning reasons why the child is remaining in DCF's custody, if appropriate, beyond any mandatory deadlines.
- Ask what changes, if any, have been made in the child's living arrangement and/or placement since the last hearing. If there has been a change, ask if the change was necessary to achieve the child's permanency goal or meet the child's service needs. (*See Placement Stability Considerations, Section 4*)

Address and plea of parent when parent is present for advisory.

- Obtain a plea of admit, deny, or consent from each parent. Explain the effect of the pleas to unrepresented parents. Enter a plea of denial for a parent who remains silent or pleads evasively. Determine that a plea of admit or consent is made knowingly, voluntarily, and intelligently, and that the parent understands the possible consequences of the plea.
- **If admit or consent is entered for all parties, proceed to hear evidence of manifest best interests, or schedule a later hearing for that purpose. If the manifest best interests testimony is presented satisfactorily to the court, the court may proceed with disposition, or a separate hearing may be scheduled within 30 days. Make findings relating to manifest best interests by clear and convincing evidence. § 39.810.** *(See Manifest Best Interests Colloquy, Section 9)*
- **If a plea of denial is entered by or on behalf of a parent, schedule adjudicatory and pretrial status conference. § 39.808.** Provide dates, times, and places for both. Provide that information orally and in writing while the parent is present, have the parent sign the notice(s) of hearing, and include the information in written order.
- **Order parents to attend the adjudicatory hearing and advise of consequences of failure to appear. Advise each parent who is present: "You are ordered to appear in person for the adjudicatory hearing at the date, time and place I stated. If you fail to appear in person at that hearing, your failure to appear constitutes consent to the termination of parental rights, and you will lose your parental rights to your child(ren) forever." Rule 8.525(d).**
- Incorporate the findings concerning the plea, order to appear, and effect of a failure to appear into the written order.

Conducting advisory when parent has been shown to have been properly served but is not present for advisory.

- Verify with DCF or the clerk whether counsel has been appointed or made an appearance for the parent in the case, and whether there been any written response from the parent.

- Announce the failure to appear on the record and inquire of the missing parent's lawyer if the parent is en route to the courtroom or if the parent will be appearing. A consent for failure to appear should not be entered if the parent is merely late but actually does appear at the hearing, or if the parent is shown to be making a good faith effort to appear.
- If the parent does not appear, enter a consent to termination of parental rights for failure to appear on behalf of the parent who did not appear.

Set the next hearing.

- Schedule an additional advisory hearing if appropriate to address missing parents who were not served.
- **Schedule adjudicatory hearing within 45 days from advisory. § 39.808(3); Rule 8.525(b).**
- **Order parents to appear at adjudicatory hearing, specifying the date, time, and location of hearing and the consequences for failure to appear. § 39.801(3)(d).**
- **Schedule pretrial status conference, not less than 10 days before the adjudicatory hearing. § 39.808(5); Rule 8.510(b).**
- Verify that the case worker has produced necessary adoption documents and that adoption home studies have been completed.
- Announce date for next judicial review unless it is already scheduled.

Complete a written order.

TERMINATION OF PARENTAL RIGHTS ADVISORY HEARING SUPPLEMENT

- **TPR generally.**

  Is court closure of termination of parental rights hearings mandatory? Yes. § 39.809(4). Natural Parents of J.B. v. DCF, 780 So. 2d 6 (Fla. 2001) (holding that closure is statutorily mandated, therefore the court need not make particular showing to justify closure). "Because there is no presumption of openness in TPR proceedings, a mandatory closure requirement does not unconstitutionally limit the public's right of access to the proceedings." Id. at 10. Moreover, ". . . the mandatory closure of certain proceedings involving children is not an unconstitutional limitation on First Amendment freedoms." Id. at 11.

  Can you hold hearings involving more than one child simultaneously? Yes. Hearings may be held simultaneously if the children involved are related or were involved in the same case. § 39.809(4).

- **Representation and appointment of counsel.**

  What do I need to do with regard to representation and/or appointment of counsel? See section in shelter hearing supplement titled, "Representation and appointment of counsel."

  What should I do after swearing in the parties? The court shall advise parents of the right to counsel, ascertain whether the right to counsel is understood, and appoint counsel for parents who qualify as indigent. §§ 39.013(9); 39.013(9)(a).

  Advise the parents of the right to an effective attorney. Rule 8.510(a)(2)(A). *See* J.B. v. Department of Children and Families, 170 So. 3d 780 (Fla. 2015)(holding that indigent parents have the right to the effective assistance of counsel in TPR proceedings).

  If a parent has voluntarily executed a written surrender and consents to the entry of a court order terminating parental rights, provisions relating to the appointment of counsel do not apply. § 39.807(1)(d).

- **Parties and notices.**

  What should I know about identifying parties and ensuring proper notice was accomplished? See section titled Shelter Hearing "Parties and Notices".

  Service should be made pursuant to Rule 8.225(f)(5).

- **Initiation of proceedings.**

  How are proceedings initiated? Proceedings are initiated by filing an original TPR petition in the pending dependency action, if any, by DCF, the GAL, or any other person who has knowledge of the facts alleged or is informed of them and believes they are true. § 39.802(1); Rule 8.500(a)(1).

  Should the petition be in writing? The TPR petition must be in writing and signed by the petitioner under oath stating the petitioner's good faith in filing the petition. § 39.802(2).

  Does the filing of a petition trigger a scheduling requirement? When a TPR petition has been filed, an advisory hearing must be set "as soon as possible" after all parties have received notice, unless the petition is based upon voluntary surrender. §§ 39.802(3), 39.808(1).

  Must an advisory hearing be held when the petition is based on voluntary surrender? No. Instead, the adjudicatory hearing must be held within 21 days. § 39.808(4).

- **Service.**

  All process and orders issued by the court must be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of DCF or the GAL. § 39.801(5).

  Subpoenas for witnesses, documents, or other tangible objects may be issued at the request of a party or on the court's motion. § 39.801(4).

  Subpoenas may be served within the state by:

  - Any person over 18 who is not a party to the proceeding,
  - DCF, or
  - The GAL. § 39.801(6).

  No fee may be paid for service by an agent of DCF or the GAL. Any sheriff's fees for service must be paid by the county. § 39.801(7).

  Must the record of a case that includes an order that permanently deprives a parent of custody be preserved permanently? Yes. § 39.814(2).

  Does an order of TPR permanently deprive the parents of any right to the child? Yes. § 39.811(5).

  Note: The court retains exclusive jurisdiction in a child's adoption pursuant to Chapter 63 when parental rights are terminated. § 39.813.

- **TPR petition.**

  What supporting facts must a TPR petition contain? A TPR petition must contain facts supporting the following allegations:

- That at least one of the grounds for TPR has been met. *See Termination of Parental Rights Advisory Hearing Section.*
- That the parents were informed of their right to counsel at all hearings they attended.
- That a dispositional order adjudicating the child dependent was entered in any prior dependency proceeding relied upon in offering a parent a case plan.
- That the manifest best interests of the child would be served by the granting of the petition.
- That the parents of the child will be informed of the availability of private placement of the child with an adoptive entity, as defined in § 63.032. § 39.802(4); Rule 8.500(b).

The petition shall also contain:

- Allegations as to the identity and residence of the parents, if known;
- The age, sex, and name of the child;
- A certified copy of the birth certificate of each child named in the petition (unless after a diligent search, petitioner is unable to produce it, in which case the petition shall state the date and place of birth of each child unless these matters cannot be ascertained after diligent search or for good cause); and
- When required by law, a showing that the parents were offered a case plan and have not substantially complied with it. Rule 8.500(b).

Does the parent need to file an answer to the petition? No. The answer to the petition or any other pleading need not be filed. § 39.805. Such matters may be pleaded orally before the court or filed in writing. § 39.805. However, if a written answer is filed, then amendments may be filed only with leave of the court.

- **Grounds for termination of parental rights.**

Who may petition for TPR? Any person with knowledge of the facts alleged and who believes such facts are true may petition for TPR under any of the following circumstances:

- When a parent has voluntarily signed a written surrender and consented to an order giving custody to DCF for adoption and DCF is willing to accept custody of the child. § 39.806(1)(a).

- When an abandonment as defined in § 39.01(1) has occurred or when the identity or location of a parent is unknown and cannot be ascertained by diligent search within 60 days. § 39.806(1)(b).
- When a parent engaged in conduct toward the child or other children that demonstrates that the continuing involvement of the parent in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child, even with the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency. § 39.806(1)(c).
- When a parent is incarcerated and one of the following three circumstances exists:
  - The expected period of incarceration will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court must consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration; OR
  - The incarcerated parent has been determined by the court to be:
    - a violent career criminal (as defined in § 775.084);
    - a habitual violent felony offender (as defined in § 775.084);
    - a sexual predator (as defined in § 775.21);
    - convicted of: first degree or second degree murder (in violation of § 782.04) or a sexual battery that constitutes a capital, life, or first degree felony violation of § 794.011; or
    - convicted of an offense in another jurisdiction which is substantially similar to one of the listed offenses; OR
  - The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interests of the child. When determining harm, the court must consider the following factors:
    - the age of the child;

Substantial portion. The Florida Supreme Court has clarified the meaning of "substantial portion" in § 39.806(1)(d)(1). The Court held that "the statutory language 'requires the court to evaluate whether the time for which a parent is expected to be incarcerated in the future constitutes a substantial portion of the time before the child reaches eighteen, not whether the time the parent has been incarcerated is a substantial portion of the child's life to date."

B.C. v. Department of Children and Families, 887 So. 2d 1046, 1052 (Fla. 2004)(citation omitted).

Substantially similar offense. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed above, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States, or any possession or territory thereof, or any foreign jurisdiction. § 39.806(1)(d).

        - the relationship between the child and the parent;
        - the nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs;
        - the parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration; and
        - any other factor the court deems relevant
    - § 39.806(1)(d).
- When a child has been adjudicated dependent; a case plan with a goal of reunification has been filed with the court; and the child continues to be abused, neglected, or abandoned by the parents. § 39.806(1)(e).

What constitutes evidence of continuing abuse, neglect, or abandonment on behalf of the parent? The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 12 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or the failure of DCF to make reasonable efforts to reunify the parent and child. § 39.806(1)(e)(1).

When does the 12-month period begin to run? The 12-month period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with DCF or a person other than the parent and the court's approval of a case plan having the goal of reunification with the parent, whichever occurs first. § 39.806(1)(e)(1).

- When the parent or parents have materially breached the case plan. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with the case plan before time to comply with the case plan expires. § 39.806(1)(e)(2).
- When the child has been in care for any 12 of the last 22 months and the parents have not substantially complied with the case plan so as to permit reunification under § 39.522(2) unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. § 39.806(1)(e)(3).
- When a parent engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatened the life, safety, or physical, mental, or emotional health of the child or the child's sibling. Proof of a nexus between egregious conduct to a child and the potential harm to the child's sibling is not required.
    - "Sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.

    - "Egregious conduct" means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child. § 39.806(1)(f).
- When a parent has subjected the child or another child to aggravated child abuse as defined in § 827.03, sexual battery or sexual abuse as defined in § 39.01, or chronic abuse. § 39.806(1)(g).
- When the parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child. Proof of a nexus between the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery to a child and the potential harm to a child or another child is not required. § 39.806(1)(h).
- When the parental rights of the parent to a sibling of the child have been terminated involuntarily. § 39.806(1)(i).
- When the parent or parents have a history of extensive, abusive, and chronic use of alcohol or a controlled substance which renders them incapable of caring for the child, and have refused or failed to complete available treatment for such use during the 3-year period immediately preceding the filing of the petition for termination of parental rights. § 39.806(1)(j).
- When a test administered at birth that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant, and the biological mother of the child is the biological mother of at least one other child who was adjudicated dependent after a finding of harm to the child's health or welfare due to exposure to a controlled substance or alcohol as defined in section § 39.01, after which the biological mother had the opportunity to participate in substance abuse treatment. § 39.806(1)(k).
- On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care pursuant to Chapter 39 or the law of any state, territory, or jurisdiction of the United States which is substantially similar to Chapter 39, and the conditions that led to the child's out-of-home placement were caused by the parent or parents.
  § 39.806(1)(l).
- When the court determines by clear and convincing evidence that the child was conceived as a result of an act of sexual battery made unlawful pursuant to § 794.011, or pursuant to a similar law of another state, territory, possession, or Native America tribe where the offense occurred. It is presumed that termination of parental rights is in the best interest of the child if the child was conceived as a result of the unlawful sexual battery. A petition for termination of parental rights under this paragraph may

be filed at any time. The court must accept a guilty plea or conviction of unlawful sexual battery pursuant to § 794.011 as conclusive proof that the child was conceived by a violation of criminal law. § 39.806(1)(m).

- When the parent is convicted of an offense that requires the parent to register as a sexual predator under § 775.21. § 39.806(1)(n).

In upholding the constitutionality of § 39.806(1)(i), the Florida Supreme Court has held that "parental rights may be terminated under § 39.806(1)(i) only if the state proves both a prior involuntary termination of rights to a sibling and a substantial risk of significant harm to the current child. Further, the state must prove that the termination of parental rights is the least restrictive means of protecting the child from harm." Department of Children and Families v. F.L., 880 So. 2d 602, 609-610 (Fla. 2004).

When a parent's case plan has a goal of reunification, and DCF wants to file for TPR on the same facts before the date for case plan completion, then DCF must allege and prove by clear and convincing evidence that the parent has materially breached the case plan. § 39.802(8). *See* § 39.806(1)(e)(2).

- **Voluntary surrender/consent.**

Surrender.

Is there a time period in which parents must consent by written surrender? Parents may consent by written surrender at any time on the record. *See* Rule 8.500(g)(1).

If the parents consent and execute surrenders and waivers of notice before filing of the petition, this shall be alleged in the petition and copies filed with the court. Rule 8.500(g)(2).

- A surrender must be executed before 2 witnesses and a notary public or other person authorized to take acknowledgments. § 39.806(1)(a)(1).
- When a parent has executed a voluntary surrender before the petition is filed, the court must conduct a hearing at which the parent has an opportunity to challenge the prior consent and/or deny the allegations of the petition. *See* L.O. v. DCF, 807 So. 2d 810 (Fla. 4th DCA 2002).

How quickly must I hold an adjudicatory hearing for a petition for voluntary termination? Adjudicatory hearings for petitions for voluntary termination must be held within 21 days after the filing of the petition. Notice of the use of voluntary termination provisions must be filed with the court at the same time as the filing of the TPR petition. § 39.808(4).

- A surrender and consent may be withdrawn after acceptance by DCF only if the court finds the surrender and consent were obtained by fraud or under duress. § 39.806(1)(a)(2).

Consent.

Is there a time period in which parents must consent? Parents may consent at any time, in writing or orally, on the record. *See* Rule 8.500(g)(1).

- Shall I incorporate factual findings into the order of disposition if the parents appear and enter an oral consent? Yes. If the parents appear and enter an oral consent on the record, the court shall determine the basis upon which a factual finding may be made and shall incorporate these findings into the order of disposition. Rule 8.500(g)(3).

Knowing, intelligent, and voluntary. Consider including the following questions in an inquiry to determine whether a plea is knowing, intelligent, and voluntary:

- Have you read the petition or had someone read the petition to you?
- Did you have enough time to talk with your attorney?
- Were you promised anything or threatened in any way in order to get you to enter this plea?
- Are you under the influence of any drugs, alcohol or medication at this time?
- Do you have a mental illness that you are being treated for or have been treated for in the past?
- How far did you go in school?

Failure to appear. If a parent fails to appear, determine whether the parent was properly ordered to appear and advised of the consequences for failure to appear, and enter a consent by default as appropriate. *See* § 39.801(3)(d) (stating that if a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing stating the date, time and location of that hearing, then failure to personally appear shall constitute consent to TPR).

Expedited TPR.

"Expedited TPR" means a proceeding wherein a case plan with the goal of reunification is not being offered. § 39.01(26).

Reasonable efforts to preserve and reunify families are not required if a court has determined that any of the events described in § 39.806(1)(b)-(d) or (f)-(m) have occurred.
§ 39.806(2). See Termination of Parental Rights Advisory Hearing regarding Grounds for Termination of Parental Rights.

When an expedited TPR petition is filed, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.
§ 39.806(4).

- **Advisory hearing - generally.**

- An advisory hearing on the TPR petition must be held as soon as possible after all parties have been served with the petition and a notice of the date, time, and place of the hearing. § 39.808(1).
- An advisory hearing is not required if the TPR is based on a voluntary surrender of parental rights.
- An adjudicatory hearing must be held within 21 days of the filing of the petition. § 39.808(4). See Termination of Parental Rights Advisory Hearing regarding Voluntary Surrenders.

What requirements must the court follow before it may terminate parental rights?

Notice of the date, time, and place of the advisory hearing and a copy of the TPR petition must be personally served upon the following persons, specifically notifying them that a petition has been filed.

- The parents of the child.
- The legal custodians of the child.
- If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.
- Any person who has physical custody of the child.
- Any grandparent entitled to priority for adoption under § 63.0425.
- Any prospective parent who has been identified under § 39.503 or § 39.803, unless a court order has been entered pursuant to § 39.503(4) or (9) or § 39.803(4) or (9) which indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the TPR petition is not required if the prospective father executes an affidavit of non-paternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.
- The GAL. *See* § 39.801(3)(a).
- If a party required to be served with notice cannot be served, notice of hearings must be given as prescribed by the rules of civil procedure, and service of process must be made as specified by law or civil actions. § 39.801(3)(b).

Section 39.801(3)(a)(5) includes a reference to § 63.0425 regarding grandparents with priority to adopt. In 2003, that provision was amended and deleted the priority status of grandparents. Section 63.0425 now provides that if a "child has lived with a grandparent for at least 6 months within the 24-month period immediately preceding the filing of a petition for termination of parental rights pending adoption, the adoption entity shall provide notice to that grandparent of the hearing on the petition for termination for parental rights pending adoption." *See* Ch. 2003-58, § 6, Laws of Florida.

What language must be included in the notice to respond or appear? The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD (OR CHILDREN) NAMED IN THE PETITION ATTACHED TO THIS NOTICE." *See* § 39.801(3)(a).

Can notice be waived? Yes. Notice may be waived if the person executes a written surrender of the child before two witnesses and a notary public or other officer authorized to take acknowledgments. § 39.801(3)(c). *See Termination of Parental Rights Advisory Hearing Section, Voluntary Surrenders*.

If the person served with notice containing the required admonition about failure to appear does not personally appear at the advisory hearing, the failure to personally appear shall constitute consent for termination of parental rights by the person given notice.

- Counsel for a parent may not appear at the advisory hearing in lieu of the parent. *See* In the Interest of W.C., et al., 797 So. 2d 1273 (Fla. 1st DCA 2001). (Upholding the entry of a default consent to TPR where parent failed to personally appear at the advisory hearing but instead sent his attorney).

What information determines whether a consent for failure to appear should be granted? Whether consent for failure to appear should be granted depends on the circumstances underlying the parent's failure to appear. A parent who is late but shows up for the hearing, even after it has been called on the docket, should not be the subject of a consent for failing to appear. Likewise a parent who is making a good faith effort to appear but is unable to appear should not be the subject of a consent for failure to appear.

The caselaw on consents for failure to appear at advisory hearings mirrors caselaw on analogous consents entered at the dependency adjudication stage of the proceedings. The Second District Court of Appeal has reversed a consent for failure to appear at an advisory hearing. T.E.D. v. Department of Children and Families, 867 So. 2d 405 (Fla. 2nd DCA 2003)(Reversing order terminating parental rights when the father was three minutes late for the advisory hearing). *See also* K.K. v. Department of Children and Families, 862 So. 2d 903 (Fla. 2nd DCA 2003);

After determining that 24 hours notice to a parent for an advisory hearing was insufficient, the Court concluded its opinion with the statement that "we do not find that the consent by default provision contained in [the statute] is unconstitutional." J.B. v. Department of Children and Families, 768 So. 2d 1060, 1068 (Fla. 2000).

Whether a consent for failure to appear should be granted depends on the circumstances underlying the parent's failure to appear. A parent who is late but shows up for the hearing, even after it has been called on the docket, should not be the subject of a consent for failing to appear.

The caselaw on consents for failure to appear at termination of parental rights adjudicatory hearings mirrors caselaw on analogous consents entered at the dependency adjudication stage of the proceedings as well as advisory hearings.

The Second District Court of Appeal has reversed a consent for failure to appear at a termination of parental rights adjudicatory hearing when the father was late to the hearing but his counsel requested a continuance until the father arrived, which was denied. In V.M. v. Department of Children and Families, 941 So. 2d 1255, 1256 (Fla. 2nd DCA 2006), the father "traveled from Hawaii to Tampa to be at the adjudicatory hearing, but on the day of the hearing, he was delayed in traveling to the courthouse by bus. The father arrived at the courthouse after the trial court announced that it was entering a consent and terminating the father's parental rights due to his nonappearance. *See also* B.B. v. Department of Children and Families, 943 So. 2d 885 (Fla. 2nd DCA 2006)(reversing consent entered upon mother's failure to appear when the mother experienced transportation problems and the mother's counsel assured the court he would provide transportation for the mother to the next hearing).

B.H. v. Department of Children and Families, 882 So. 2d 1099 (Fla. 4th DCA 2004)(reversing consent entered against parent who was a resident of Minnesota and appeared by telephone); *But see* In re W.C., 797 So. 2d 1273 (Fla. 1st DCA 2001)(affirming consent entered when parent who was resident of New Jersey failed to appear personally and instead appeared through counsel).

Appoint a guardian ad litem, if one has not yet been appointed.

Must I appoint a GAL to represent the best interests of the child in any TPR proceeding? Yes. § 39.807(2)(a). *See* G.S. v. DCF, 838 So. 2d 1221 (Fla. 3rd DCA 2003) (reversing termination of parental rights where trial court failed to inquire whether a GAL had been appointed, did not attempt to appoint a GAL, and did not determine whether the child's interests were adequately protected throughout pendency of the proceeding); *compare* In re E.F., 639 So. 2d 639 (Fla. 2nd DCA 1994) (If the court makes a good faith effort to comply with the statute by attempting to appoint a GAL, it is not fundamental error if none are available and the TPR case proceeds.); S*ee also*, L.D. v. DCF, 770 So. 2d 219 (Fla. 3rd DCA 2000).

A GAL is not required at a voluntary relinquishment of parental rights proceeding. § 39.807(2)(e).

- **Acceptance of pleas.**

  The parent shall, prior to the adjudicatory hearing, be advised by the court of the right to counsel and shall be given an opportunity to deny the allegations in the TPR petition or to enter a plea to allegations in the petition before the court. § 39.805.

  - If the parent denies the allegations of the petition or appears and remains silent or pleads evasively, the court must enter a denial and set the case for an adjudicatory hearing. Rule 8.520(b).
  - If the parent appears and enters a plea of admission or consent, the court shall determine:
    - That the admission/consent is made voluntarily and with a full understanding of the nature of the allegations and possible consequences of the plea, and
    - That the parent has been advised of the right to counsel. Rule 8.520(c).
  - The parent must be advised of the right to an effective attorney. Rule 8.510(a)(2)(A). *See* J.B. v. Department of Children and Families, 170 So. 3d 780 (Fla. 2015)(holding that indigent parents have the right to the effective assistance of counsel in TPR proceedings).

  If the parent admits/consents, findings regarding the plea (and whether it is knowing, intelligent, and voluntary) and the parent's right to counsel must be incorporated in the order of disposition in addition to findings of fact specifying the acts causing the TPR. Rule 8.520(c). See Termination of Parental Rights Advisory Hearing section for inquiry.

- If admit or consent is entered for all parties, proceed to hear evidence of manifest best interests or schedule a later hearing for that purpose. If the manifest best interests testimony is presented satisfactorily to the court, the court may proceed with disposition or a separate hearing may be scheduled within 30 days. Make findings relating to manifest best interests by clear and convincing evidence. *(See Manifest Best Interests Colloquy, Section 9)*

  If a plea of denial is entered by or on behalf of a parent, schedule adjudicatory and pretrial status conference. Provide dates, times, and places for both. Provide that information orally and in writing while the parent is present, have the parent sign the notice(s) of hearing, and include the information in written order.

- **Set pretrial status conference and next hearing.**

  The court shall conduct a pretrial status conference not less than 10 days before the adjudicatory hearing to determine:

  - The order in which each party may present witnesses or evidence;
  - The order in which cross-examination and argument shall occur; and
  - Any other matters that may aid in the conduct of the hearing to prevent any undue delay. § 39.808(5).

Schedule an additional advisory hearing if appropriate to address missing parents who were not served.

When should I schedule a TPR adjudicatory hearing? Schedule adjudicatory hearing within 45 days from advisory unless each of the necessary parties agree to some other hearing date. § 39.808(3); Rule 8.525(b).

- **Requirements of written order.**

  Include findings regarding indigency and appointment or waiver of counsel. § § 39.807(1)(a), 39.807(1)(c)(2).

  Ensure that the order clearly sets forth each specific date on which the hearing was held.

  Promptly enter written orders for the appointment of counsel and authorization of transcription for purposes of payment.

  Permit court reporters to prioritize transcriptions of TPR cases before other hearings.

  Order parents to appear at adjudicatory hearing, specifying the date, time and location of the hearing and the consequences for failure to appear. § 39.801(3)(d).

  If the parent admits/consents, make findings regarding the voluntariness of the plea, indigency and appointment or waiver of counsel, and the specific acts causing the TPR. Rule 8.520(c).

  If the parent fails to appear, make findings regarding the sufficiency of service/notice and either enter a consent for failure to appear or make findings regarding the necessity for another advisory hearing for that parent. § 39.801(3)(d); Rules 8.510(a)(3).

  Include specific order for parents to appear at adjudicatory hearing, specifying the date, time and location of hearing and that the consequences for failure to appear are that the parent's rights will be terminated. § 39.801(3)(d), Rule 8.525(d).

  If terminating parental rights, make findings that the termination is the least restrictive means of protecting the child.

  Cite the specific provisions of § 39.0139 when granting continuances.